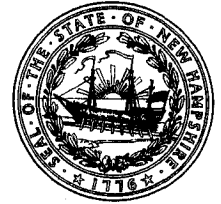




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

RER, LLC
Attn: Richard Renshaw
662 North Mast Road
New Boston, NH 03070

Re: 215 & 239 North Stark Highway, Weare, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 05-067**

July 18, 2005

I. INTRODUCTION

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to RER, LLC, pursuant to RSA 485-A:22 and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling **\$54,500** be imposed against RER, LLC for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. PARTIES

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. RER, LLC ("RER") is New Hampshire Limited Liability Company having a mailing address of 662 North Mast Road, New Boston, New Hampshire 03070.

III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of, inter alia, RSA 485-A:17, Env-Ws 415, or any permit issued pursuant hereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. RER is the owner of property located on North Stark Highway (a/k/a Route 114), in Weare, NH, more particularly identified on Town of Weare Tax Maps as Map/Lot #'s 405/7, and 201/71-1 and 71-2 ("the Property").
4. On April 23, 2003, DES personnel conducted an inspection of the Property. The following was observed:

- a) Alteration of terrain activities in excess of 100,000 square feet had taken place on the Property;
- b) No erosion and sediment control measures had been installed on the Property; and,
- c) Sediment from the Property had migrated onto an abutting property on the east side of Route 114.

6. A review of DES records showed that an "Alteration of Terrain" (Site Specific) permit application had not been submitted by RER for the activities on the Property, described in Paragraph 5 above.

7. During the April 23, 2003 inspection, DES personnel informed Rick Renshaw of RER that all earth moving activities on the Property should be discontinued and that only the work necessary to stabilize the Property and control erosion on the Property should be performed.

8. On May 15, 2003, DES issued Administrative Order No. WD 03-016 ("the Order") to RER. The Order was sent to RER via Certified Mail but went unclaimed. The Order was subsequently served on RER by the Hillsborough County Sheriff on June 16, 2003.

9. The Order required RER to:

- a) Cease and desist all terrain alteration activities on the Property, except as necessary to stabilize the Property;
- b) Stabilize the Property immediately to protect surface water quality and prevent erosion; and,
- c) Prepare and implement an erosion and sediment control plan for the Property.

10. On July 21, 2003, DES received an erosion control plan from Keyland Enterprises on behalf of RER.

11. On August 21, 2003, DES received a letter from Alden Beauchemin of Keyland Enterprises, on behalf of RER, stating that soil piles on the Property would be removed "within 2-3 weeks."

12. On September 3, 2003, DES personnel inspected the Property and noted the following:

- a) Large stockpiles of soil adjacent to the driveway had neither been removed nor stabilized;
- b) A large amount of sediment had accumulated in roadside swales and had migrated through a cross-road culvert onto the abutting property on the northeast side of NH Route 114.

13. On December 24, 2003, DES personnel conducted another follow-up inspection of the Property and observed that the large stockpiles of soil had not been removed and had not been stabilized.

14. On February 3, 2004, DES issued an amendment to the Order. The amendment further ordered RER to submit an application for a Site Specific Permit to DES within 30 days of the date of the amendment. The application was to be prepared by an engineer licensed in the State of New Hampshire, and in accordance with Env-Ws 415.05.

15. On March 16, 2004, DES personnel were contacted by Alden Beauchemin, on behalf of RER, regarding the condition of the Property. Mr. Beauchemin stated that the soil stockpiles had been removed, but did not know if the Property was stabilized because he had not inspected the Property.

16. On April 7, 2004, DES personnel conducted another inspection of the Property and observed the following:

- a) Exposed soils on the Property in excess of 100,000 square feet had not been stabilized;
- b) Appropriate erosion control measures had not been installed or maintained; and,
- c) Culverts located at the driveway entrance to the Property ("driveway culvert") and under Route 114 ("Route 114 culvert") were full of sediment, and a large amount of sediment had been deposited onto the property across the street (Route 114).

17. On May 18, 2004, DES personnel conducted another follow-up inspection of the Property and observed the following:

- a) Some areas of the Property had been stabilized;
- b) Exposed unstabilized soils remained on the slopes adjacent to the driveway onto the Property; and,
- c) Sediment filled the inlet to the Route 114 culvert.

18. On May 11, 2005, DES personnel conducted an inspection of the Property and observed the following:

- a) The formerly exposed soils on the Property were sparsely vegetated;
- b) The inlet to the culvert at the entrance of the driveway to the Property remained unstable and filled with sediment;
- c) A ditch leading to the driveway culvert had been constructed on the south side of the driveway; and,
- d) Runoff was pooled at the Route 114 culvert and at both ends of the driveway culvert.

19. As of this date, DES has not received an application from RER for a Site Specific permit for the Property, as required by the Order, as amended.

IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. RER, LLC has violated RSA 485-A:17 by altering more than 100,000 square feet of terrain without a permit from DES. For this violation, Env-C 603.02 (a)(1) specifies a fine of \$1,500.
2. RER, LLC has violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install erosion control measures on the Property. For this violation, Env-C 603.02 (i)(1) specifies a fine of \$1,000.
3. RER, LLC has violated RSA 485-A:22 by failing to comply with the requirements of Administrative Order WD 03-016 for 26 months. For this violation, Env-C 603.08 (a) specifies a fine of \$2,000 per calendar month, or part thereof that compliance is not achieved after the deadline specified in the Order. Based on the duration of the violation, the Division is currently seeking a fine of \$52,000. This violation is ongoing.

The total fine being sought is \$54,500.

V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

Pursuant to Env-C 601.06, RER, LLC is required to respond to this notice. Please respond no later than August 26, 2005 using the enclosed colored form.

1. If RER, LLC would like to have a hearing, please have an authorized representative sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If RER, LLC wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance form, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If RER, LLC chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

RER, LLC is not required to be represented by an attorney. If RER, LLC chooses to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the RER, LLC committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the RER, LLC committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that RER, LLC proves, by a preponderance of the evidence, applies in this case:**

1. The violation was a one-time or non-continuing violation, **and** the RER, LLC did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the RER, LLC did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, RER, LLC was making a good faith effort to comply with the requirement that was violated.
3. RER, LLC has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the RER, LLC's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that RER, LLC committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is RER, LLC's opportunity to present testimony and evidence that RER, LLC did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If RER, LLC has any evidence, such as photographs, business records or other documents, that RER, LLC believes show that RER, LLC did not commit the violation(s) or that otherwise support RER, LLC's position, the RER, LLC should bring the evidence to the hearing. RER, LLC may also bring witnesses (other people) to the hearing to testify on RER, LLC's behalf.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.des.nh.gov). If the RER, LLC has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
DES Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Rene Pelletier, Administrator, DES Land Resources Management Program
Ana Herrero, DES Water Division
cc: Weare Planning Board
Weare Conservation Commission

***** RETURN THIS PAGE ONLY *****

**RER, LLC IS REQUIRED BY LAW
TO RESPOND TO THIS NOTICE.**

PLEASE RESPOND NO LATER THAN August 26, 2005

Please check the appropriate line and fill in the requested information below.

APPEARANCE On behalf of RER, LLC:

_____ I request to have a **formal hearing** scheduled in this matter.

_____ I would like to **meet informally** to discuss the issues in this matter.

WAIVER OF HEARING On behalf of RER, LLC:

_____ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$54,500 paid to "Treasurer, State of New Hampshire" is enclosed.*

** If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Pursuant to Env-C 203.05 please provide the following information:

Signature

Date

Name (please print or type): _____

Title: _____

Phone: _____

RETURN THIS PAGE ONLY AND ANY PAYMENT TO:

DES Legal Unit

Attn: Michael Sclafani, Legal Assistant

P.O. Box 95

Concord, NH 03302-0095

ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-2

2002

Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.